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Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

OCTOBER TERM, 1903.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
Petitioner,

against

CITY OF CHICAGO,
Respondent.

No. 132.

PETITION FOR WRIT OF CERTIORARI TO CORRECT RECORD.

WILLIAM D. GUTHRIE,
JAMES F. MEAGHER,
Of counsel for Petitioner.

[18,672]

[18,672.]

Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

OCTOBER TERM, 1903.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
Petitioner[1],
vs.
CITY OF CHICAGO,
Respondent[2].
No. 132.

NOTICE OF PETITION FOR WRIT OF CERTIORARI TO CORRECT RECORD.

Notice is hereby given that the annexed petition for a writ of *certiorari* under rule 14 will be presented to the Supreme Court of the United States, in the City of Washington, on the 9th day of December, 1903, at the coming in of the court on that day, or as soon thereafter as counsel can be heard.

New York, N. Y., December 8, 1903.

WILLIAM D. GUTHRIE,
JAMES F. MEAGHER,
Of counsel for Petitioner.

To GRANVILLE W. BROWNING,
Counsel for Respondent.

(1) Plaintiff in error.
(2) Defendant in error.

SUPREME COURT OF THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

OCTOBER TERM, 1903.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, *Petitioner*,

vs

CITY OF CHICAGO, *Respondent*.

No. 132.

PETITION FOR WRIT OF CERTIORARI TO CORRECT RECORD.

To the Honorable The Supreme Court of the United States:

The People's Gas Light and Coke Company, petitioner above named, suggests to the court a diminution of the record in the above entitled cause in that there exists a mistake in the decree of the Circuit Court inadvertently made in the entry thereof, occurring in the absence from the state and circuit of the Circuit Judge who heard and determined the same, and consisting of the statement that the bill of complaint was dismissed for want of jurisdiction, contrary to the true intent of the decision that said bill be dismissed on its merits, and your petitioner respectfully presents this petition for a writ of *certiorari* to correct said mistake, or to permit the transcript of the record to be amended, and respectfully submits the following reasons why its petition should be granted:

I.

The record in this case was filed in this court on September 25, 1902, and shows that it came here on appeal from the Circuit Court of the United States for the northern district of Illinois, that said suit was instituted in said Circuit Court by bill of complaint in equity of your petitioner praying an injunction against the enforcement of a certain ordinance of the respondent City of Chicago on the ground that said ordinance impaired the obligation of a contract existing between your petitioner and the State of Illinois, that the respondent interposed a demurrer to said bill on the ground that it did not state any such cause as to entitle the complainant to the relief prayed, that, on the hearing of said demurrer, the said Circuit Court considered the merits of said cause of action and decided to sustain the demurrer, as appears from its opinion (record, pp. 20–25), that thereupon an amendment of said bill of complaint was allowed, a demurrer on the same ground was again interposed, and again on rehearing the court considered the merits of said cause of action, reaffirmed the conclusions previously announced, and determined that the demurrer to the amended bill should be sustained, as appears from the opinion on rehearing (record, pp. 86–87), that thereupon on July 30, 1902, a decree was entered sustaining said general demurrer and dismissing said bill "for want of jurisdiction" (record, p. 87), and that thereupon the whole case was removed to this court by appeal under authority of section 5 of the judiciary act of March 3, 1891, c. 517, 26 Stat. 827.

II.

Your petitioner further shows that there has been filed in this court a certificate of the clerk of said Circuit Court showing that, on December 5, 1903, there was filed in said Circuit Court a stipulation in writing, signed by counsel for the respective parties, a copy of which is hereto annexed, consenting to an order *nunc pro tunc* amending and correcting said decree so that the same would conform to the true decision of the Court, and that the opinion of said Circuit Court should be corrected in like manner; and that, thereupon, said Circuit Court, on December 5, 1903, made and entered the following order:

> "Ordered and decreed that the final order and decree heretofore entered July 30, 1902, in the above entitled suit now pending on appeal to the Supreme Court of the United States, be and the same hereby is amended *nunc pro tunc* as of said July 30, 1902, so as to state the true decision of the court by striking therefrom after the word 'dismissed,' the words, 'for want of jurisdiction,' and inserting in lieu thereof the words 'upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois,' and that the record on appeal be and the same hereby is amended accordingly, so that said appeal may be heard and decided on the decree as now amended *nunc pro tunc*."

III.

Your petitioner further shows that there has been filed in this court a stipulation in writing signed by counsel for the respective parties, consenting that said

decree of July 30, 1902, be corrected in this court, in accordance with said *nunc pro tunc* order of the Circuit Court of December 5, 1903, that the opinion of said Circuit Court on rehearing be corrected in like manner, and that such proceedings be had in this court as shall effectuate said correction as fully to all intents and purposes as if contained in the original record now in this court, so that the appeal may be heard and decided on the amended decree as expressing the true decision of the Circuit Court.

IV.

The reasons why this application was not made at the first term after the entry of the case in this court are that Mr. William D. Guthrie was not retained to argue the appeal of the People's Gas Light and Coke Company in this court until after the close of such first term, that the delay in the employment of counsel for the presentation of said case was partly due to the absence of Mr. Guthrie from the United States in January, February and March, 1903; and that Mr. Guthrie only ascertained that the decree dismissing the bill for want of jurisdiction was an inadvertent error and was not intended by the circuit judge who heard and determined the case, within the last few days, namely, on December 4, 1903, when, in the argument of another case in said Circuit Court, the court stated to Mr. Guthrie from the bench that the decree had been entered in the absence of the circuit judge who heard and decided the case and did not correctly set forth his intention, but that, on the contrary, he intended to decide the contract question upon the merits and to dismiss

the bill upon that point and only to decline to decide the question of the power of the common council for want of jurisdiction over that question.

V.

Your petitioner further shows that the practice of suffering amendments of the records of this court by *certiorari* to the lower court, or on stipulation without *certiorari*, to correct the same, is established by the rules and decisions of this court, as your petitioner is advised by counsel and therefore avers. Rule 14; *Stewart* v. *Ingle*, 9 Wheat. 526; *Woodward* v. *Brown*, 13 Pet. 1; *Hudgins* v. *Kemp*, 18 How. 530, 534; *Stitt* v. *Huidekopher*, 131 U. S. appendix, cxviii; *Chappell* v. *United States*, 160 U. S. 499, 506.

VI

Wherefore, your petitioner prays the issuance of a writ of *certiorari* for the correction of the said record in the manner set out in said *nunc pro tunc* order of December 5, 1903, or that the court suffer an amendment of said record in accordance with said stipulation without *certiorari*, by striking from the decree of July 30, 1902, therein, after the word "dismissed" in the 15th line from the bottom of page 87 of the printed transcript of the record, the words "for want of jurisdiction" and by inserting in lieu thereof in the margin the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois", and by correcting the opinion of the Circuit Court on rehearing in like manner, as stated in said stipulation annexed hereto.

Due and timely notice of this petition has been acknowledged by counsel for the respondent, as is shown by a communication from him addressed to and on file with the clerk of this court.

Washington, D. C., December 9, 1903.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
by GEORGE O. KNAPP,
its president.

WILLIAM D. GUTHRIE,
JAMES F. MEAGHER,
Of counsel for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
City and County of New York.

GEORGE O. KNAPP, being duly sworn, on oath says that he is the president of the petitioner corporation named in the foregoing petition for writ of *certiorari*, and who has subscribed the same on behalf of said corporation; that he has read said petition and knows the contents thereof; that the matters therein set forth are true of his own knowledge.

GEORGE O. KNAPP.

Subscribed and sworn to before me this 8th day of December, A. D. 1903.

JOHN J. DALY,
Notary Public, Kings County,
Certificate filed in New York County.

[NOTARIAL SEAL.]

STIPULATION.

UNITED STATES CIRCUIT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY *vs.* CITY OF CHICAGO.	No. 25,780.

It is hereby stipulated and agreed by and between the parties in the above entitled suit that the decree heretofore entered in the above entitled suit on or about the thirtieth day of July, 1902, in the absence of the Honorable Peter S. Grosscup, Circuit Judge, before whom the case was heard and argued, and which decree does not correctly recite the judgment as intended by the court, be amended *nunc pro tunc* as of said July 30th, 1902, so as to strike therefrom, after the word "dismissed," the words "for want of jurisdiction," and to insert in lieu thereof the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois;" that an order or decree so amending and correcting said decree be forthwith entered without prejudice to any of the proceedings heretofore had or to the appeal from said decree of July 30th, 1902, now pending in the Supreme Court of the United States, and that such proceedings be had in said Supreme Court as shall effectuate the amendment of said

decree *nunc pro tunc* as fully to all intents and purposes as if contained in the original record now in said Supreme Court, so that the appeal may be heard and decided on the decree as now amended *nunc pro tunc.*

It is also hereby stipulated and agreed that the opinion of the court on rehearing be likewise amended *nunc pro tunc*, so as to omit therefrom, after the word "dismissed" the words "for want of jurisdiction in this court over the cause of action set forth," and to insert in lieu thereof the words, "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois," and that an order be entered amending the record accordingly.

Chicago, December 5, 1903.

SEARS, MEAGHER & WHITNEY,
Solicitors for People's Gas Light and Coke Company.

GRANVILLE W. BROWNING,
Solicitor for the defendant, The City of Chicago.

(Endorsed)—Filed Dec. 5, 1903.—Marshall E. Sampsell, Clerk.